

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HASSIE-DEMOND NOWLIN

Plaintiff,

v.

LAND SAFE CREDIT

Defendant.

CIVIL ACTION FILE  
NO. 1:11-CV-00019-UA-PTS

**DEFENDANT'S OPPOSITION TO MOTION FOR DEFAULT JUDGMENT**

Defendant LANDSAFE CREDIT, INC. (erroneously sued as "LAND SAFE CREDIT") ("LANDSAFE"), by counsel, states as follows in opposition to Plaintiff's Motion for Default Judgment:

1. The Civil Docket for this case shows that Plaintiff filed the Complaint in this matter in the U.S. District Court, Middle District of North Carolina, on January 13, 2011, and that the Summons was issued January 21, 2011. *See* Civil Docket for Case #1:11-cv-00019-UA-PTS, attached hereto as Exhibit A.

2. Plaintiff filed a Motion for Default Judgment with the Court on February 28, 2011. *See* Exhibit A.

3. Upon information and belief, LANDSAFE was not personally served with the Summons and Complaint in this matter until March 22, 2011, and LANDSAFE has never been served with said Motion for Default Judgment.

4. In Plaintiffs' Motion for Default Judgment, Plaintiff claims that "[t]he clerk of the court served upon the Defendant LAND SAFE CREDIT the Summons and the Complaint...on or about the 13th Day of January 2011," and that "... the Defendant

signed the US mail receipt and it was returned to the clerk.” *See* Plaintiff’s Motion for Default Judgment. However, Plaintiff does not attach any evidence of service or a U.S. Mail receipt showing the same.

5. Because LANDSAFE was not served with the Summons and Complaint until March 22, 2011, the deadline for LANDSAFE to respond to the Complaint is April 12, 2011, and, therefore, LANDSAFE is not in default. *See* Fed.R.Civ.P. 12.

6. Furthermore, because the Civil Docket shows that Summons was not issued until January 21, 2011, it would have been impossible for Plaintiff to obtain proper service on January 13, 2011 as recited in Plaintiff’s motion.<sup>1</sup> *See* Exhibit A.

**WHEREFORE**, LANDSAFE requests that the Court deny Plaintiff’s Motion for Default Judgment in its entirety.

Respectfully submitted, this the 5th day of April, 2011.

/s/ Robert A. Muckenfuss

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*Attorneys for Defendant LandSafe Credit*

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<sup>1</sup> Curiously, in his Affidavit of Competency filed on February 28, 2011, Plaintiff claims that LANDSAFE was served with the Summons and Complaint on a different date – January 15, 2011. *See* Affidavit of Competency; *see* Exhibit A. Further, in his Motion for Default, Plaintiff claims that Defendant was due to respond to the Complaint on January 18, 2011. *See* Plaintiff’s Motion for Default Judgment. However, neither proper service nor a response deadline could have occurred, before the Court issued the summons in this matter on January 21, 2011.

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this 5th day of April, 2011, served the foregoing **DEFENDANT'S OPPOSITION TO MOTION FOR DEFAULT JUDGMENT** and proposed **ORDER** which was filed using the Court's CM/ECF system, on Plaintiff by depositing a copy thereof in the custody of the United States Postal Service, first-class postage prepaid, addressed to:

Hassie-Demond Nowlin  
2020 Anthony Court  
Greensboro, North Carolina  
(336) 327-5716

/s/ Robert A. Muckefuss

Robert A. Muckenfuss